

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Request for Review of the)	
Decision of the)	
Universal Service Administrator by)	
)	
Union County School District)	File No. SLD-263728
Maynardville, Tennessee)	
)	
Federal-State Joint Board on)	CC Docket No. 96-45
Universal Service)	
)	
Changes to the Board of Directors of the)	CC Docket No. 97-21
National Exchange Carrier Association, Inc.)	

ORDER

Adopted: May 20, 2002

Released: May 21, 2002

By the Telecommunications Access Policy Division, Wireline Competition Bureau:

1. The Telecommunications Access Policy Division has under consideration a Request for Review filed by Union County School District (Union), Maynardville, Tennessee.¹ Union requests review of a decision by the Schools and Libraries Division (SLD) of the Universal Service Administrative Company (Administrator) concerning Union's application for discounts in Funding Year 4 under the schools and libraries universal service support mechanism.² For the reasons set forth below, we deny Union's Request for Review. To the extent the Union requests a waiver of the Commission's rules, we deny that request as well.

2. Under the schools and libraries universal service support mechanism, eligible schools, libraries, and consortia that include eligible schools and libraries, may apply for discounts for eligible telecommunications services, Internet access, and internal connections.³ In order to receive discounts on eligible services, the Commission's rules require that the applicant submit to the Administrator a completed FCC Form 470, in which the applicant sets forth its

¹ Letter from Wayne Goforth, Union County School District, to Federal Communications Commission, filed July 23, 2001 (Request for Review).

² See Request for Review. Section 54.719(c) of the Commission's rules provides that any person aggrieved by an action taken by a division of the Administrator may seek review from the Commission. 47 C.F.R. § 54.719(c).

³ 47 C.F.R. §§ 54.502, 54.503.

technological needs and the services for which it seeks discounts.⁴

3. Once the applicant has complied with the Commission's competitive bidding requirements and entered into agreements for eligible services, it must file an FCC Form 471 application to notify the Administrator of the services that have been ordered, the carriers with whom the applicant has entered into an agreement, and an estimate of funds needed to cover the discounts to be given for eligible services.⁵ In Funding Year 4, this information was provided in Block 5 of the FCC Form 471.⁶ Using information provided by the applicant in its FCC Form 471, the Administrator determines the amount of discounts for which the applicant is eligible. Approval of the application is contingent upon the filing of FCC Form 471, and funding commitment decisions are based on information provided by the school or library in this form.

4. Under the Commission's regulations, SLD is authorized to establish and implement filing periods and program standards for FCC Form 471 applications by schools and libraries seeking to receive discounts for eligible services.⁷ Pursuant to this authority, every funding year, SLD establishes and notifies applicants of a "minimum processing standard" to facilitate the efficient review of the thousands of applications requesting funding.⁸ In Funding Year 4, SLD instructions noted that item 23 of Block 5 was part of the minimum processing standards.⁹ Specifically, minimum processing standards required applicants to provide at least one component of the eligible pre-discount cost in either columns E, H, I, or K of item 23.¹⁰ With this information, SLD is able to estimate the amount of the funding request, which permits SLD to apply our funding priority rules properly in situations where demand exceeds the annual funding cap, as was the case in Funding Year 4.¹¹ When an applicant submits a Block 5

⁴ 47 C.F.R. § 54.504(b)(1), (b)(3).

⁵ 47 C.F.R. § 54.504(c).

⁶ Schools and Libraries Universal Service, Service Ordered and Certification Form, OMB 3060-0806 (October 2000) (FCC Form 471).

⁷ See 47 C.F.R. § 54.507(c); *Changes to the Board of Directors of the National Exchange Carrier Association, Inc., Federal-State Joint Board on Universal Service*, CC Docket Nos. 97-21 and 96-45, Third Report and Order in CC Docket No. 97-21 and Fourth Order on Reconsideration in CC Docket No. 97-21 and Eighth Order on Reconsideration in CC Docket No. 96-45, 13 FCC Rcd 25058 (1998).

⁸ See, e.g., SLD web site, Form 471 Minimum Processing Standards and Filing Requirements for FY4, <<http://www.sl.universalservice.org/reference/471mps.asp>> (Funding Year 4 Minimum Processing Standards).

⁹ *Id.*

¹⁰ *Id.*

¹¹ In *Federal-State Joint Board on Universal Service, Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers, Transport Rate Structure and Pricing, End User Common Line Charge*, CC Docket No. 96-45, Fifth Order on Reconsideration and Fourth Report and Order in CC Docket No. 96-45, Report and Order in CC Docket Nos. 96-45, 96-262, 94-1, 91-213, 95-72, 13 FCC Rcd 5318 (1997), the Commission established new rules to govern how discounts will be allocated when available funding is less than total demand and a filing window is in effect. *Id.* at 14938, para. 36. These rules provide that requests for telecommunications and Internet access services for all discount categories shall receive first priority for available funds (Priority One Services). Any funding remaining is allocated to the requests for support for internal connections (Priority Two Services) beginning with the most economically disadvantaged schools and libraries, as determined by their discount rate. In Funding Year 3, SLD granted all approved requests for discounts for telecommunications services and Internet access and granted all approved requests for internal connections down to the 81 percent discount level.

Worksheet that omits an item subject to the minimum processing standard, SLD automatically rejects the funding request and returns it to the applicant.

5. Union filed its FCC Form 471 with SLD on January 17, 2001.¹² Union included one Block 5 worksheet in its application, which was partially completed and indicated that Union was requesting discounts for telecommunications services. Union failed to provide any information in item 23 and left all columns, including columns E, H, I, and K, blank.¹³ As a result, SLD returned the application to Union because it did not meet minimum processing standards.¹⁴ On February 20, 2001, Union appealed the decision to SLD and provided a revised Block 5 worksheet with the missing information.¹⁵ SLD denied the appeal on June 26, 2001, citing its original reasoning that the applicant failed to meet the minimum processing standards.¹⁶ In response, Union filed the instant Request for Review stating that the missing information was the result of a computer printing error.¹⁷ Union also attached a revised copy of the Block 5 worksheet.¹⁸

6. As an initial matter, we conclude that Union may not amend its FCC Form 471. The application window for Funding Year 4 closed on January 18, 2001. Union filed revised copies of their Block 5 worksheets on February 20, and July 23, 2001, after the end of the Funding Year 4 filing window.¹⁹ The Commission's rules have established a policy that applicants are not permitted to amend completed FCC Forms 471 after the closure of the filing window.²⁰ If applicants were permitted to correct their applications after SLD has denied them, it would eliminate any incentive to avoid making unauthorized service requests or to comply with the SLD's document demands in a timely fashion.²¹ This would significantly increase the administrative burden SLD would face while carrying out its obligation to guard against the occurrence of errors and fraud.²² Furthermore, if applicants were permitted to amend their

¹² FCC Form 471, Union County School District, filed January 17, 2001 (Union Form 471).

¹³ *Id.*

¹⁴ Letter from Universal Service Administrative Corporation, Schools and Libraries Division to Wayne Goforth, Union County School District, issued January 30, 2001.

¹⁵ Letter from Wayne Goforth, Union County School District, to Universal Service Administrative Corporation, Schools and Libraries Division, filed February 20, 2001 (SLD Appeal Letter).

¹⁶ *See* Letter from Universal Service Administrative Corporation, Schools and Libraries Division to Wayne Goforth, Union County School District, issued June 26, 2001.

¹⁷ *See* Request for Review.

¹⁸ *Id.*

¹⁹ Union attached a revised worksheet to the SLD Appeal Letter and the Request for Review. The SLD Appeal Letter was filed on February 20, 2001, and the Request for Review was filed on July 23, 2001. *See* SLD Appeal Letter; Request for Review.

²⁰ The Commission's rules require that applicants file a completed FCC Form 471 by the filing window deadline to be considered pursuant to the funding priorities for "in-window" applicants. 47 C.F.R. §§ 54.504(c), 54.507(c).

²¹ *See Request for Review by Cheney Public Schools, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-142969, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 5192, 5195 (2001).

²² *Id.*

requests after the filing window closed, it could jeopardize SLD's ability to accurately apply the rules of priority in years where requests for funding exceed the annual funding cap.²³ This policy imposes upon applicants the responsibility of preparing its applications carefully. For that reason, we deny Union's request to amend its FCC Form 471 subsequent to the filing window for Funding Year 4.

7. In light of the thousands of applications that SLD must review and process each funding year, we find it administratively appropriate to require applicants to adhere strictly to SLD's minimum processing standards.²⁴ In *Naperville*, however, the Commission determined that, under the totality of the circumstances presented in that case, SLD should not have returned an application without consideration for failure to enter information required by SLD's minimum processing standards.²⁵ The Commission specifically found that "(1) the request for information was a first-time information requirement on a revised form, thereby possibly leading to confusion on the part of the applicants; (2) the omitted information could be easily discerned by SLD through examination of other information included in the application; and (3) the application is otherwise substantially complete."²⁶

8. After review of the record, we conclude that, under the totality of the circumstances, SLD correctly returned Union's application. First, we note that the information requested in Item 23 was not a first time information request in Funding Year 4.²⁷ Second, the omitted estimate of the eligible pre-discount cost could not be easily discerned through examination of other information included in the application.²⁸ Therefore, we find that it is incumbent on each applicant to clearly indicate in item 23 at least one component of the eligible

²³ *Id.*

²⁴ See *Request for Review by Anderson School Staatsburg, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of National Exchange Carrier Association, Inc.*, File No. SLD-13364, CC Docket No. 96-45 and 97-21, Order, 15 FCC Rcd 181 (2000), at para. 8 ("In light of the thousands of applications that SLD review and processes each funding year, it is administratively necessary to place on the applicant the responsibility of understanding all relevant program rules and procedures."); see also SLD web site, Universal Service Administrative Company, Schools and Libraries Program, Reference Area: Form 471 Minimum Processing Standards and Filing Requirements, <<http://www.sl.universalservice.org/reference/471mps.asp>> (outlining the manual and online filing requirements for FCC Form 471).

²⁵ *Request for Review by Naperville Community Unit School District 203, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-203343, CC Dockets No. 96-45 and 97-21, Order, 16 FCC Rcd 5032, para. 12 (2001) (*Naperville*).

²⁶ *Id.* para. 16.

²⁷ See FCC Form 471; Instructions for Completing Schools and Libraries Universal Service, Services Ordered and Certification Form (FCC Form 471), OMB 3060-0806 (September 1999) at 22-23.

²⁸ In particular, we note that the information included in attachments to a Block 5 worksheet is not an adequate substitute for satisfactory completion of the FCC Form 471. See *Request for Review by Broome-Tioga BOCES Consortium, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-112132, CC Docket Nos. 96-45 and 97-21, Order, 15 FCC Rcd 8371 (Com. Car. Bur. 1999), para. 5; *Request for Review by Genesee Intermediate School District, Federal-State Joint Board on Universal Service, Changes to the Board of Directors of the National Exchange Carrier Association, Inc.*, File No. SLD-151960, CC Docket Nos. 96-45 and 97-21, Order, 16 FCC Rcd 11820, 11823 (Com. Car. Bur. 2001) ("It would significantly increase SLD's administrative costs if it had to examine every different attachment in thousands of applications to determine if an applicant has requested funding for additional services not listed in Block 5.").

pre-discount cost. Accordingly, we find that by not providing information in either column E, H, I, or K or item 23, Union did not meet minimum processing standards for this request.

9. To the extent that Union may be requesting a waiver of the Commission's rules, we conclude that Union has not demonstrated a sufficient basis for waiver. A waiver from the Commission is appropriate if special circumstances warrant a deviation from the general rule, and such deviation would better serve the public interest than strict adherence to the general rule.²⁹ A rule, therefore, may be waived where the particular facts make strict compliance inconsistent with the public interest.³⁰ In requesting funds from the schools and libraries universal service support mechanism, the applicant has certain responsibilities. The applicant bears the burden of getting its forms and other information to SLD for processing within the established deadline if the applicant wishes to be considered with other in-window applicants.

10. The particular facts of this case do not rise to the level of special circumstances required for a deviation from the general rule. Union contends that it experienced an unspecified "computer printing error."³¹ In order for the program to work efficiently, the applicant must assume responsibility for timely and complete submission of its application materials. As a result, it was Union's responsibility to carefully review its application before submission to SLD and ensure that it complied with program rules and regulations. We therefore find that Union fails to present good cause as to why the Commission's rules should be waived. As a result, we deny Union's Request for Review.

11. ACCORDINGLY, IT IS ORDERED, pursuant to authority delegated under sections 0.91, 0.291, and 54.722(a) of the Commission's rules, 47 C.F.R. §§ 0.91, 0.291, and 54.722(a), that the Request for Review filed July 23, 2001 by Union County School District IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Mark G. Seifert
Deputy Chief, Telecommunications Access Policy Division
Wireline Competition Bureau

²⁹ *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (*Northeast Cellular*); see also *WAIT Radio*, 897 F.2d at 1159 (stating that the Commission may take into account considerations of hardship, equity, or more effective implementation of overall policy on an individual basis).

³⁰ *Northeast Cellular*, 897 F.2d at 1166.

³¹ Request for Review.